IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1317 of 2001

with
Civil Application No.3385 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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NEW INDIA ASSURANCE CO LTD.

Versus

LATE JIGESH JAGMALBHAI CHAUHANTHRO'HIS PARENTS & NEXT FRIEND

Appearance:
MS LILU K BHAYA for appellant
MR PJ KANABAR for Respondents

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 16/07/2001

ORAL JUDGEMENT

1. Admitted. Learned advocate, Mr. P.J. Kanabar, waives service of notice of admission on behalf of the respondents. At the request of the learned advocates for the parties, this appeal is taken up for final hearing

today.

2. Heard the learned advocates for the parties.

3. This is an appeal under Section 173 of the Motor Vehicles Act, 1988, at the instance of the insurer of the vehicle which is allegedly involved in the accident in question.

4. The appellant challenges herein the order dated November 8, 2000 passed by the Motor Accident Claims Tribunal (Main), at Amreli, below application Exh.4, in MACP No.627 of 2000, for compensation under 'no fault liability' as provided under Section 140 of the said Act. Obviously, this award is in the nature of an interim award which is subject to adjustment against the final award which may be passed in the main claim petition viz. MACP No.627 of 2000, pending before the Motor Accident Claims Tribunal, at Amreli. This principle is established by the Supreme Court decision in the case of The Oriental Insurance Co. Ltd vs. Hansrajbhai V. Kotadia, reported at 2001 (4) JT 477.

5. In the premises aforesaid, I see no reason to interfere at this stage of the matter.

6. The original claimant shall, however, file an undertaking before the Tribunal within four weeks of the service of this order on the claimant to the effect that the main claim petition shall not be abandoned, shall not be withdrawn and shall not be permitted to be dismissed for default or for any other cause, and that the claimant shall obtain a decision on merits in the said claim petition. The amount awarded under the impugned order shall be adjusted against the final award in the main claim petition.

7. On the said undertaking being filed, 50% of the amount of the impugned award may be withdrawn by the original claimants on furnishing security to the satisfaction of the Tribunal. Remaining 50% of the amount of the award is directed to be invested in a cumulative fixed deposit in a nationalised bank till disposal of the main MACP.

8. Subject to the observations and directions hereinabove, the above appeal stands disposed of with no order as to costs.

9. The amount deposited in the appeal, if any, with the Registry is directed to be transmitted to the Tribunal forthwith, i.e. not later than July 30, 2001.

10. As the appeal stands disposed of, Civil Application for stay would not survive and it stands disposed of accordingly with no order as to costs
11. Direct service is permitted.

July 16, 2001 (M.H. Kadri, J.)
(swamy)